

BEFORE THE NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION

STATE OF NORTH CAROLINA)	
)	
COUNTY OF BRUNSWICK)	SPECIAL ORDER BY CONSENT
)	
IN THE MATTER OF:)	SOC 2016- <u>001</u>
CPI USA NORTH CAROLINA LLC)	
)	
)	

This SPECIAL ORDER BY CONSENT (“ORDER”) is made and entered into pursuant to North Carolina General Statute 143-215.110 by and between CPI USA NORTH CAROLINA LLC (the “COMPANY”) and the ENVIRONMENTAL MANAGEMENT COMMISSION, an agency of the State of North Carolina (the “COMMISSION”).

WITNESSETH:

- I. The COMPANY and the COMMISSION do hereby stipulate and agree to the following:
 - A. The COMPANY operates an electric power generating facility (the “Facility”) (SIC code 4911) at 1281 Powerhouse Drive SE, Southport, Brunswick County, North Carolina. The Facility operates under Air Quality Permit No. 05884T20 (the “Permit”) which was issued by the North Carolina Division of Air Quality (“DAQ”) on April 18, 2016. The Permit supersedes Permit No. 05884T19 and all previously-issued permits issued by the DAQ to the Facility.
 - B. The U.S. EPA modified the National Ambient Air Quality Standard (“NAAQS”) for sulfur dioxide (“SO₂”) to a 1-hour standard in 2010. The standard is 75 parts per billion (“ppb”) and compliance is determined by measuring the 99th percentile of 1-hour daily maximum concentrations each year and averaging those values over three years. The DAQ has conducted modeling of the Facility’s emissions to determine the ambient impact relative to the 1-hour SO₂ NAAQS. Based on the modeling of emissions at the allowable SO₂ limits in Permit No. 05884T19, the ambient impact would exceed the 1-hour SO₂ NAAQS.

- C. At the Facility, the COMPANY has been authorized by the Permit to operate six steam electric generating boilers. Emissions from three of the boilers (ES-1-1A, ES-1-1B, and ES-1-1C) are emitted through a common stack and the boilers and stack are collectively referred to as Unit 1 or ES-1. Emissions from the other three boilers (ES-2-1A, ES-2-1B, and ES-2-1C) are emitted through a different common stack. Those boilers and stack are collectively referred to as Unit 2 or ES-2.
- D. The Permit contains certain provisions related to emissions of SO₂ from the Facility. In particular, Section 2.1A.3.b.ii of the Permit establishes an emission limit of 453.6 pounds SO₂ per hour for each of Units 1 and 2, on a 1-hour average (the "Emission Limit"). The effective date of the Emission Limit is June 24, 2016. Section 2.1A.3.b.iii of the Permit requires the COMPANY to provide no later than July 17, 2016 an ambient SO₂ monitor (the "Ambient Monitor") for installation and operation near the Facility by the DAQ. Section 2.1A.3.dd.ii of the Permit requires the COMPANY to report emissions of SO₂ that exceed the Emission Limit by notifying the DAQ Regional Supervisor or Director of any such occurrence by 9:00 a.m. Eastern time on the next business day after the Company becomes aware of the occurrence (the "Notification Requirement").
- E. The provisions of the Permit related to the Emission Limit, the Ambient Monitor, and the Notification Requirement, which were not included in any previous version of the Permit, are based on modeling of SO₂ levels in ambient air conducted by the DAQ. In its modeling analysis, the DAQ determined that the Facility's compliance with the Emission Limit in the Permit would result in modeled compliance with the 1-hour NAAQS for SO₂.
- F. In order to achieve the Emission Limit, the COMPANY would need to make substantial changes at the Facility, such as operational changes, installation of emission controls, or equipment modifications.
- G. After the installation of the Ambient Monitor near the Facility, the COMMISSION and the COMPANY will determine: (i) if actual measured SO₂ levels near the Facility are below the NAAQS under the current operating

conditions at the Facility and (ii) if modification to the Facility to achieve the Emission Limit is ultimately necessary.

- H. The COMMISSION and the COMPANY agree that, for purposes of this ORDER, achieving compliance with the SO₂ NAAQS may be determined either by ambient monitoring or modeling.
- I. The COMMISSION and the COMPANY agree to enter this ORDER for the purpose of allowing the COMPANY to evaluate changes to achieve the Emission Limit or otherwise provide for compliance with the NAAQS, subject to the DAQ's concurrent review of SO₂ data from the Ambient Monitor.

THEREFORE, the COMMISSION and the COMPANY, desiring to resolve and settle the compliance issues between them, have agreed to enter into this ORDER with the following terms and conditions:

II. The COMPANY, desiring to operate in a safe and environmentally sound manner in accordance with the rules and regulations of the COMMISSION, does hereby agree to perform the following activities:

- A. The DAQ shall provide the COMPANY with the specifications (including manufacturer and model number) for the Ambient Monitor. The COMPANY shall provide the Ambient Monitor to the DAQ by July 17, 2016.
- B. The COMPANY shall conduct an evaluation (the "Evaluation") of potential compliance alternatives to determine if any of them can be implemented at the Facility to achieve the Emission Limit or otherwise provide for compliance with the NAAQS. At a minimum, the COMPANY shall evaluate the following alternatives:
 - Demonstrate compliance with the SO₂ NAAQS through data from the Ambient Monitor
 - Adjust fuel blend
 - Modify SO₂ emission controls
 - Adjust stack height

- Any economically viable alternative that the COMPANY identifies during the Evaluation.

The COMPANY may include in the Evaluation any data or other information collected from the Ambient Monitor. The COMPANY shall evaluate the feasibility, cost and required time period for implementing each alternative, identify any required regulatory approvals for each alternative, and determine whether each alternative will achieve the Emission Limit or otherwise provide for compliance with the NAAQS. The COMPANY shall summarize the Evaluation in a written report ("Feasibility Report"). The Feasibility Report shall identify the option selected by the COMPANY and a proposed schedule for implementation.

- C. If, based on data from the Ambient Monitor that have been validated by the DAQ, the DAQ finds that four or more daily maximum 1-hour SO₂ values exceed 75 ppb within the first four months of operation of the Ambient Monitor, the COMPANY shall submit the Feasibility Report to the DAQ within 120 days after the DAQ notifies the COMPANY of the fourth daily maximum 1-hour value in exceedance of 75 ppb. If the fourth daily maximum 1-hour exceedance occurs during the fifth through twelfth months of operation of the Ambient Monitor, the COMPANY shall submit the Feasibility Report to the DAQ within 90 days after the DAQ notifies the COMPANY of the fourth daily maximum 1-hour value in exceedance of 75 ppb.
- D. If the COMPANY is not required to submit the Feasibility Report to the DAQ under paragraph II.C, the COMPANY shall submit the Feasibility Report to the DAQ within 60 days after the DAQ has provided the COMPANY with the DAQ's assessment of validated data collected during the first twelve months of operation of the Ambient Monitor.
- E. If, based on data from the COMPANY's SO₂ continuous emissions monitoring ("CEM") system at the Facility, the COMPANY determines that its SO₂ emissions have exceeded the Emission Limit in Section 2.1A.3.b.ii of the Permit on or after its effective date of June 24, 2016, the COMPANY shall notify the DAQ's Regional Supervisor by 9:00 a.m. Eastern time on the next business day.

Excess SO₂ emissions, as reported by the COMPANY pursuant to this ORDER, shall be considered a violation of the Emission Limit in the Permit. The COMPANY shall not be required to notify the DAQ after the first occurrence of SO₂ emissions above the Emission Limit and the COMPANY shall not be required to comply with the Notification Requirement. The facility shall continue to submit quarterly reports detailing excess emissions as required under the CEM monitoring and reporting requirements in Section 2.1A.3.dd.i of the Permit.

III. If, due to ambient SO₂ concentrations in excess of 75 ppb at the Ambient Monitor, the COMPANY must implement the chosen option described in the Feasibility Report to comply with the NAAQS, its implementation will be subject to a schedule to be prescribed in a new and separate Special Order by Consent (the "SOC") between the COMPANY and DAQ. The separate SOC shall be signed by the COMPANY within 90 days of the submittal of the Feasibility Report required under paragraph II.C of this ORDER. Alternately, the new and separate SOC shall be signed by the COMPANY within 90 days of (i) notification by the DAQ of the fourth validated daily maximum 1-hour value from the Ambient Monitor exceeding 75 ppb within a 12-month period or (ii) the submittal of the Feasibility Report under paragraph II.D of this ORDER, whichever occurs later.

IV. The COMMISSION agrees that, except as provided in the terms and requirements of this ORDER, it shall not issue a separate Notice of Violation or pursue any additional enforcement action against the COMPANY related to the 1-hour SO₂ NAAQS, Emission Limit, Ambient Monitor, or Notification Requirement during the term of this ORDER. In the event that the COMPANY fails to comply with any deadline as set out in this ORDER or fails to achieve final compliance with any applicable requirement in this ORDER, the COMPANY agrees that, unless excused under Paragraph V, the COMPANY will pay the COMMISSION stipulated penalties according to the following schedule:

<u>Deadlines and Requirements</u>	<u>Stipulated Penalties</u>
First exceedance of the 453.6 lb/hr SO ₂ Emission Limit in Section 2.1A.3.b.ii of the Permit.	\$1000 for the first exceedance
Fourth daily maximum 1-hour SO ₂ measurement exceeding 75 ppb at the Ambient Monitor within a 12-month period due to the emissions from the Facility.	\$1000 for the fourth exceedance
Failure to meet any deadline established in Paragraph II or III.	\$500 per day for the first 5 days and \$1000 per day thereafter.

Stipulated Penalty:

Failure within thirty (30) days of receipt of the DAQ Director's written demand to pay the penalties will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether thirty (30) days has elapsed.

V. The COMPANY'S obligation to comply with the requirements set forth in this ORDER for which a stipulated penalty may be assessed may be delayed or excused only to the extent that noncompliance is caused by circumstances beyond control of the COMPANY, as determined by the DAQ Director. Contractor delays or failure to obtain funding will not be considered events beyond the COMPANY'S control. If any such delaying event occurs, the COMPANY shall notify the DAQ in writing within ten (10) days of encountering or discovering the delaying event, describing in detail the event or delay, the precise cause(s) of the event or delay, the measure(s) taken and to be taken by the COMPANY to prevent or minimize the event or delay, and the schedule by which those measures will be implemented. If the COMPANY establishes good cause for its failure to comply with any part of this ORDER, (*i.e.*, noncompliance was caused by circumstances beyond the control of the COMPANY), the DAQ and the COMPANY jointly may stipulate and agree to a written modification of this ORDER. Extension of any compliance date pursuant to this Paragraph shall not extend any subsequent deadlines established in the ORDER unless the subsequent deadline necessarily is dependent upon completion of the earlier deadline.

VI. This ORDER shall pertain only to the equipment, sources, and operations described in Paragraph I of this ORDER. Any violation of Air Quality Standards resulting from other sources or equipment for which the COMPANY is responsible shall subject the COMPANY to appropriate enforcement action pursuant to North Carolina General Statute 143-215.114.

VII. The COMPANY agrees to waive any rights it may have to seek judicial review to challenge this ORDER or to seek a stay of enforcement of this ORDER in connection with any judicial review of the State Implementation Plan. The COMMISSION acknowledges that this waiver does not prohibit the COMPANY from seeking modification of this ORDER if any regulatory standards upon which this ORDER is based are changed subsequent to its execution. In such cases, the COMPANY may petition that the ORDER be modified to reflect those regulatory changes.

VIII. On or before the tenth day of each month following installation of the Ambient Monitor, the DAQ shall provide the COMPANY with raw SO₂ data collected from the Ambient Monitor during the previous month. Within 10 days after the DAQ validates any SO₂ data from the Ambient Monitor, the DAQ shall provide such validated data to the COMPANY. The DAQ shall notify the COMPANY on the following business day after determining that raw data from the Ambient Monitor indicates an exceedance of 75 ppb SO₂ has occurred. The DAQ shall notify the COMPANY within 10 business days after determining that validated data from the Ambient Monitor indicates an exceedance of 75 ppb SO₂ has occurred.

IX. The COMPANY shall agree to allow DAQ staff access through the Facility property to access the Ambient Monitor on adjacent property pursuant to a license agreement to be executed by the DAQ and the COMPANY. The COMPANY shall agree to allow the DAQ to store equipment, such as an ATV, at the Facility to improve access to the monitoring site.

X. The DAQ shall conduct a review of ambient monitoring data collected after the first 12 months following the beginning of operation of the Ambient Monitor, and at the end of each calendar year thereafter.

XI. If the data from the Ambient Monitor or from a modeling analysis indicate that the area near the Facility is in compliance with the NAAQS prior to the termination of this ORDER, the COMPANY may submit to the DAQ a permit modification request to modify the Emission Limit in the Permit.

XII. The order shall terminate at the earliest of the following:

- i. The date in paragraph XX.
- ii. Upon approval of such modification by DAQ and issuance of a permit with a revised emission limit requested by the COMPANY as outlined in paragraph XI.
- iii. The effective date of a new and separate SOC required under paragraph III.

XIII. In the event the COMMISSION or the DAQ find that reports, plans, specifications, or permit applications required by Paragraph II are in any respect deficient or if additional information is necessary to comply with the requirements of North Carolina General Statutes 143-215.107 *et seq.*, any regulations promulgated thereunder, or any other applicable laws or regulations, the COMPANY shall be notified by the DAQ as soon as possible. The COMPANY shall be afforded an opportunity to modify, amend, or supplement its submissions to make such submissions complete and appropriate, and request any necessary amendments to this ORDER to effectuate its compliance.

XIV. All notices and reports required from the COMPANY by this ORDER shall be delivered to:

Brad Newland, P.E., Regional Air Quality Supervisor
N.C. Dept. of Environmental Quality
127 Cardinal Drive Extension
Wilmington, NC 28405

All payments required from the COMPANY by this ORDER shall be mailed, first class postage prepaid, to the following address:

Enforcement Group - Payments
NCDEQ – DAQ
Mail Service Center 1641
Raleigh, North Carolina 27699-1641

XV. This ORDER constitutes full and final settlement and satisfaction of all matters addressed herein and any and all claims or prospective claims that the COMMISSION has or may have for violations of regulations described in Paragraph I hereof, as of the date this ORDER is approved by the COMMISSION. This ORDER shall not affect the COMPANY'S obligation to comply with any Federal, State, or local laws or regulations.

XVI. Final approval and entry into this ORDER are subject to the requirements that the COMMISSION give notice of proposed consent order to the public, and that the public have at least thirty (30) days within which to comment on the ORDER.

XVII. Should any provision of this ORDER be declared by a court of competent jurisdiction to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

XVIII. Any modifications of this ORDER must be agreed to in writing signed by both parties.

XIX. Except as otherwise set forth herein, this ORDER is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the COMPANY of its obligations to comply in the future with any permit.

Special Order by Consent
CPI USA North Carolina LLC

XX. This Special Order by Consent is effective upon execution by the COMMISSION and shall expire on December 31, 2020, or as provided in paragraph XII.

ATTESTED:

CPI USA NORTH CAROLINA LLC

BY:


David H. Groves
Southport Plant Manager

DATE:

5/24/2016

APPROVED AND ACCEPTED:

BY:


Environmental Management Commission

DATE:

6/24/2016